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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/786,910

02/25/2004

Randy Gearhart

3329

4401

7590

06/21/2005

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EXAMINER

PARSLEY, DAVID J

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/786,910	<b>Applicant(s)</b> GEARHART, RANDY	
	<b>Examiner</b> David J. Parsley	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 14-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 5-3-05 and this action is non-final.

### ***Claim Rejections - 35 USC § 112***

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the tertiary lengths have shorter strength than the primary legs.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,734,346 to Reinhardt.

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Referring to claims 14 and 16, Reinhardt discloses a fishing lure enhancement comprising, a skirt – at 14-17, 14'-17', of resilient material – see page 1 lines 60-70, having a hub – at 6, 8, 15, and a plurality of circumferentially spaced primary legs – at 14, 17 or 14', 17', extending radially outwardly from the hub generally in a common plane when the skirt is at rest – see for example figures 1-4, the hub being adapted for passage of a fishing line – at 9, therethrough – at 8, each of the primary legs including a plurality of secondary, generally parallel legs – at 14, extending from the hub in side by side relationship and presenting free ends that define the perimeter of the skirt and/or the outer end of the primary leg – see figures 1-4, whereby the primary legs exhibit first order movements and the secondary legs exhibit second order movements to enhance the action of the lure – see for example figures 1-4 and pages 1-2.

Referring to claims 15 and 18, Reinhardt discloses the hub has a generally radially extending slit between each of the primary legs – see proximate 15, 17 or 15', 17' in figures 3-4, to provide an independent axis of bending movement for each of the primary legs independent of the movements of the secondary legs – see for example figures 1-4.

Referring to claim 17, Reinhardt discloses the hub has elements providing an axis of bending movement for each of the primary legs independent from movements of the secondary legs – see where items 15, 17 or 15', 17, meet in figures 3-4.

Claims 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,461,598 to Brewster.

Referring to claims 14 and 16, Brewster discloses a fishing lure enhancement comprising a skirt – at 23, of resilient material having a hub – at 21-22, 33, and a plurality of circumferentially spaced primary legs – at 23, extending radially outwardly from the hub

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generally in a common plane when the skirt is at rest – see for example figures 2-4, the hub being adapted for passage of a fishing line – at 13-14 therethrough – see at 22 in figures 1 and 4, each of the primary legs including a plurality of secondary generally parallel legs – at 23, comprising strips of material extending from the hub in side by side relationship and presenting free ends that define the perimeter of the skirt and further define the outer end of the respective primary leg – see for example figures 1-4, whereby the primary legs exhibit first order movements and the secondary legs exhibit second order movements to enhance the action of the lure – see for example figures 1-4.

Referring to claims 15 and 18, Brewster discloses the hub – at 21-22,33, has a generally radially extending slit therein – see for example figures 2 and 4, between each of the primary legs to provide an independent axis of bending movement for each of the primary legs independent of the movements of the secondary legs – see for example figures 1-4.

Referring to claim 17, Brewster discloses the hub has elements – at either of 21 or 33, providing an axis of bending movement for each of the primary legs independent of the movements of the secondary legs – see for example figures 2 and 4.

Referring to claim 19, Brewster discloses the skirt further comprises a plurality of tertiary legs – at 23, of shorter strength than the primary legs extending outwardly from the hub, each of the tertiary legs being disposed between a respective pair of primary legs – see for example figures 2 and 4.

*Claim Rejections - 35 USC § 103*

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reinhardt as applied to claim 16 above, and further in view of U.S. Patent No. 5,127,183 to Wulff. Reinhardt does not disclose the skirt further comprises a plurality of tertiary legs of shorter length than the primary legs extending radially outwardly from the hub, each of the tertiary legs being disposed between a respective pair of the primary legs. Wulff does disclose the skirt – at 28,30, further comprises a plurality of tertiary legs – see figure 4, of shorter length than the primary legs extending radially outwardly from the hub – at 16,26, each of the tertiary legs being disposed between a respective pair of the primary legs – see for example figure 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Reinhardt and add the skirt with tertiary legs of Wulff, so as to allow for the device to be more attractive to fish as it is pulled through the water.

#### *Response to Arguments*

5. Regarding claims 14-19, applicant argues that he Reinhardt US 1734346 does not disclose primary legs extending radially outwardly from the hub with the primary legs having a plurality of secondary generally parallel legs. Applicant further argues that the first and second order movements of the primary and secondary legs are not disclosed as claimed in the Reinhardt

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reference. As seen in figure 4 of Reinhardt the primary legs can be the collective group of the threads/strips – at 14, which would make four primary legs shown in figure 4, and the secondary legs can be each individual thread/strip – at 14. Alternatively, as seen in figure 4 of the Reinhardt reference the primary legs can be the legs – at 14 and the secondary legs can be the legs – at 14' which are connected to the legs – at 14. Further, as seen in figures 1-5 of the Reinhardt reference the primary legs are adapted to move and the secondary legs are adapted to move and thus exhibit types of movements. The limitations first order movements and second order movements are broad limitations and thus any type of movement of the primary legs and the secondary legs exhibit a movement which can be construed as a first order or second order movement.

### *Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley  
Patent Examiner  
Art Unit 3643



**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**

6/17/05